

CSL Properties 2006, LLC

A Delaware Limited Liability Company

January 28, 2019

Honorable Joseph F. Bianco
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

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LONG ISLAND OFFICE

***Re: United States v. Philip A. Kenner, et al, 13-CR-607 (JFB)
Post-Conviction Protective Order***

Dear Judge Bianco:

We are sending this correspondence to you in our collective capacity as the current 3-Member Management Panel of the entity registered as CSL Properties 2006, LLC ("CSL Properties"). It is our understanding that there is an upcoming hearing scheduled in the above-referenced matter regarding the Government's 'Motion for Entry of an Order of Forfeiture', and to the extent we are unable to attend this proceeding in person, we wanted to briefly express our concerns to the Court before a preliminary forfeiture order is entered.

As you may recall, CSL Properties is comprised of thirteen (13) individual Members, all of whom are former clients of Philip Kenner and are now-retired NHL players. As you may further recall, under the original Operating Agreement for Diamante Cabo San Lucas, LLC ("DCSL"), CSL Properties was allocated an eight percent (8%) ownership interest in the 1,500-acre, golf and real estate project that is still being developed in Cabo San Lucas, Mexico under the Diamante name ("the Cabo property").

We have reviewed the various filings relating to the requested forfeiture, and there is significant concern among the Members of CSL Properties that the Government is apparently seeking an Order that would forfeit the entire Cabo property and/or all of the equity in the entity that owns the Cabo property – i.e. DCSL. If such an Order were entered, it is our understanding the ownership interest that CSL Properties currently holds in DCSL would also be forfeited. If that were to happen, it would be hard not to feel that we and the other Members of CSL Properties had been victimized all over again – losing yet another investment. For most (if not all) of us, the equity stake that CSL Properties holds in the Cabo property is the only remaining investment from which we hope to possibly mitigate the significant losses we all suffered as clients of Mr. Kenner. In that regard, it is very disconcerting to us having reviewed its recent Reply Memorandum that, if the Court orders a forfeiture of the entire Cabo property, the Government is already advancing an argument that "the decision to remit forfeited funds to victims as restitution remains in the government's sole discretion".

Even if CSL Properties is able to keep or regain its equity interest in the Cabo property through ancillary proceedings, we are likewise concerned that an Order which *preliminarily* forfeits to the Government the entire Cabo property (and/or DCSL) will result in a significant and undeniable disruption to the ongoing development in Mexico. Indeed, we have many questions regarding the practical considerations that would arise if such a preliminary forfeiture order is entered, and the impact those practical considerations will have on the day-to-day activities relating to the Cabo property. For instance, who would manage the property during the ancillary proceedings which may take months or years to fully resolve? What would happen to the ongoing construction during this timeframe? What would happen if DCSL defaults or is otherwise unable to timely satisfy its loan obligations while the ancillary proceedings are pending? Is there a risk that the entire Cabo property could be lost in foreclosure proceedings, if a default occurs while the ancillary proceedings are pending? We are justifiably concerned that a disruption of this magnitude could have a devastating impact on our investment, both in the short-term and long-term.

As you know, Ken Jowdy has been managing and overseeing the development of the Cabo property since the project began in 2006. We believe that he has done an effective job in this respect – under some difficult and trying circumstances, including the global financial meltdown that shuttered countless real estate projects during the late 2000s, as well as the protective order that has been in place for roughly the last 3½ years while these post-trial proceedings have been ongoing. In that regard, we are hopeful that Mr. Jowdy is allowed to continue as the manager of the Cabo property during the ancillary proceedings, to hopefully minimize any disruption to the project and CSL Properties' investment in same. We are likewise hopeful that, as it considers the scope of any preliminary forfeiture order in this matter, the Court recognizes that CSL Properties and its thirteen (13) individual Members are victims of the crimes that give rise to the forfeiture, and for many of us the equity interest that we have in the Cabo property is the only remaining investment from our dealings with Mr. Kenner that may still have value.

Your consideration of this letter is appreciated.

Respectfully submitted,


Sergei Gonchar,
Managing Member
CSL Properties 2006, LLC

Respectfully submitted,


Greg deVries,
Managing Member
CSL Properties 2006, LLC

Respectfully submitted,


Mattias Norstrom,
Managing Member
CSL Properties 2006, LLC